

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

ROBERT KENNEDY ARNOLD
TX-1324236-R

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DOCKETED COMPLAINT NO.
13-068

AGREED FINAL ORDER

On the 17th day of May, 2013, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the certification of Robert Kennedy Arnold (the "Respondent").

In order to conclude this matter, Respondent neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order.

FINDINGS OF FACT

1. Respondent Robert Kennedy Arnold is a Texas state certified residential real estate appraiser who holds certification number TX-1324236-R, and was certified by the Board during all times material to the above-noted complaint.
2. Respondent appraised real property located at: 909 West Fischer, Sherman, Texas (the Property) on or about March 25th, 2011.
3. Thereafter a complaint was filed with the Board. The complaint alleged that the Respondent produced an appraisal report for the property that did not conform to the Uniform Standards of Professional Appraisal Practice (USPAP), TEX. OCC. CODE CHPT. 1103 (the "Act") and 22 TEX. ADMIN. CODE CHPT. 153 and 155 (the "Rules").
4. Thereafter the Board, in accordance with the mandate of the Administrative Procedure Act (the "APA"), TEX. GOV'T CODE ANN. CHPT. 2001, and the Act, notified Respondent of the nature of the accusations involved and Respondent was afforded an opportunity to respond to the accusations in the complaint. Respondent was also requested to provide certain documentation to the Board, which Respondent submitted.
5. Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the property:
 - a) USPAP Ethics Rule (record keeping) -- Respondent violated the Ethics Rule because he failed to maintain a work file containing all data, information and documentation necessary to support her opinions, analyses and conclusions as required by the record keeping provisions;

- b) USPAP Scope of Work Rule and 1-2(h); 2-2(b)(vii) – Respondent has failed to comply with the scope of work rule because he did not perform the research and analyses necessary to develop credible assignment results supported by relevant evidence and logic and misrepresented his scope of work;
- c) USPAP Standards 1-2(c) & 2-2(b)(v) – Respondent failed to indicate his supporting reasoning for his determination of reasonable exposure time linked to the value determination he made;
- d) USPAP Standards 1-2(f) or (g); 2-1(c) & 2-2(b)(x) – Respondent failed to disclose extraordinary assumptions clearly and accurately, which directly affected analyses, opinions and conclusions contained in Respondent's appraisal report for the property;
- e) USPAP Standards 1-2(e)(i) & 2-2(b)(iii) -- Respondent failed to adequately identify and report the site and improvement(s) description;
- f) USPAP Standards 1-2(e)(iv) & 2-2(b)(viii); 1-3(a) & 2-2(b)(viii); 1-1(b) – Respondent failed to analyze and report easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, and ordinances or other items of a similar nature; Respondent failed to identify and analyze the effect on use and value of existing land use regulations;
- g) USPAP Standards 1-3(b) & 2-2(b)(ix) – Respondent failed to develop an opinion of the highest and best use which was credible;
- h) USPAP Standards 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a); 1-6(a) & (b) -- Respondent failed to adequately collect, verify, and reconcile comparable sales data;
- i) USPAP Standards 1-4(b)(i) & 2-2(b)(viii) – Respondent failed to disclose the analysis and reasoning that supported his site value determination and failed to employ recognized methods and techniques;
- j) USPAP Standards 1-4(b)(ii) & 2-2(b)(viii) – Respondent failed to provide support for his determination of the cost new of improvements and failed to employ recognized methods and techniques;
- k) USPAP Standards 1-4(b)(iii) & 2-2(b)(viii) – Respondent did not collect, verify, analyze and reconcile accrued depreciations and failed to employ recognized methods and techniques;
- l) USPAP Standards 1-1(a) & 2-2(b)(viii) – Respondent failed to explain and support his exclusion of the income approach adequately. Due to the number of rentals found in the area during the applicable time frame, the income approach was necessary for credible assignment results and should have been conducted;

- m) USPAP Standards 1-4(c)(i) & 2-2(b)(viii); 1-1(a) & 1-4(c) – Respondent failed to collect, verify, analyze and reconcile comparable rental data to estimate the gross income potential of the property;
- n) USPAP Standards 1-4(c)(iii) & 2-2(b)(viii); 1-1(a) & 1-4(c) – Respondent failed to collect, verify, analyze, and reconcile comparable data to estimate capitalization and/or discount rates;
- o) USPAP Standards 1-5(a) & 2-2(b)(viii) – Respondent failed to analyze and disclose 2 versions of the contract of sale for the property, including a lower contract price;
- p) USPAP Standards 1-6(a) & (b) & 2-2(b)(viii) – Respondent failed to reconcile the quality and quantity of the data within the approaches used and the applicability or suitability of the approaches; and,
- q) USPAP Standards 1-1(a), 1-1(b), 1-1(c); and 2-1(a) – Respondent produced a misleading appraisal report for the property that contained several substantial errors of omission or commission by not employing correct methods and techniques and not analyzing and reconciling significant and material information he had a duty to analyze and reconcile. This resulted in an appraisal report that was not credible or reliable.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Act.
2. Respondent violated the above-noted provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(6).
3. Respondent made material misrepresentations and omissions of material fact in violation of 22 TEX. ADMIN. CODE § 153.20(a)(12).
4. The parties are authorized to resolve their dispute by means of a consent order in accordance with Tex. Occ. Code §1103.458.

ORDER

Based on the above findings of fact and conclusions of law, the Board **ORDERS** that Respondent's Texas appraiser certification be suspended for a period of 24 months, effective **5:00 p.m. (CST) on May 17, 2013**.

IT IS FURTHER ORDERED that beginning at **5:00 p.m. (CST) on May 17, 2013**, the suspension is to be fully probated for the entire 24 month period ending **May 17, 2015**, subject to the following terms and conditions:

1. **EDUCATION.** On or before **February 17, 2014**, Respondent shall submit documentation of attendance and successful completion of the classes set out below to the Board. All classes required by this Order must be classes approved by the Board. Unless otherwise noted below, all classes require in-class attendance and must have an exam. Respondent must receive a passing grade on the exam given in each class. None of the required classes will count toward Respondent's continuing education requirements for certification. Respondent is solely responsible for locating and scheduling classes to timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion of the course in the event of course cancellation or rescheduling by the course provider.
 - A. A minimum 15 classroom-hour course in USPAP;
 - B. A minimum 7 classroom-hour course in Residential Case Studies; and,
 - i. No examination shall be required for this course.
 - C. A minimum 7 classroom-hour course in Residential Sales: The Adjustment Process;
 - i. No examination shall be required for this course.
 - D. **REPORT WRITING.** On or before **February 27, 2014** Respondent shall submit a separate, 1 page, written report for each of the 3 education courses in which he:
 - (a) Describes and explains what he learned from the course;
 - (b) Describes what was previously deficient with his work product; and,
 - (c) Describes what steps he will take in his appraisal practice going forward to avoid further violations of USPAP and state law.
2. **MENTORSHIP.** On or before **August 17, 2013**, Respondent shall complete 20 hours of in-person mentorship conducted by a certified USPAP instructor approved by the Board in accordance with the schedule and topics set out below. Respondent shall submit a certification of completion signed by the approved certified USPAP instructor on or before the due date listed for each mentorship requirement. Respondent is solely responsible for locating and scheduling mentorship in order to timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion.
 - A. 10 hours of mentorship on or before **August 17, 2013**, with 5 of those hours dealing with highest and best use analysis and reporting; and,
 - B. 10 hours of mentorship on or before **August 17, 2013**.

C. **REPORT WRITING.** On or before **August 27, 2013** Respondent shall submit a separate, 1 page, written report for each of the 2 mentorship periods in which he:

(a) Describes and explains what he learned from the mentorship;

(b) Describes what was previously deficient with his work product; and,

(c) Describes what steps he will take in his appraisal practice going forward to avoid further violations of USPAP and state law.

3. **LOGS.** On or before **October 27, 2014**, Respondent shall submit to the Board an appraisal experience log on a form prescribed by the Board for the period of **July 17, 2014 to October 17, 2014**. The log shall detail **all** real estate appraisal activities Respondent has conducted during that 3 month period. This log shall be signed by Respondent and contain a notarized affidavit attesting the log is true, complete and accurate. Upon request from the Board, Respondent shall provide copies of his appraisal reports and work files for any appraisal assignments Respondent performs during the course of this period of probation within twenty days of receiving any such request.
4. **NO TRAINEES.** Respondent is prohibited from sponsoring, employing or using any appraiser trainees in his real state appraisal activities during the entire period of his 2 year probated suspension.
5. Fully and timely comply with all of the provisions of this Agreed Final Order; and,
6. Comply with all provisions of the Act, the Rules, and USPAP in the future or be subjected to further disciplinary action.

IT IS FURTHER ORDERED that Respondent shall pay an administrative penalty in the amount of \$2,500.00 on or before **June 7, 2013**. However, IT IS FURTHER ORDERED that \$1,500.00 of this administrative penalty is to be fully probated subject to timely completion of all the terms contained in this agreed final order and satisfying the above-noted report writing obligations. IT IS FURTHER ORDERED that Respondent shall pay the remaining \$1,000.00, non-probated portion of the administrative penalty on or before **June 7, 2013**.

RESPONDENT'S FAILURE TO TIMELY COMPLY WITH ANY TERM IN THIS AGREED FINAL ORDER, WHICH HAS A SPECIFIC, STATED DUE DATE SHALL RESULT IN THE AUTOMATIC REVOCATION OF PROBATION AND THE SUSPENSION IMPOSED IN THIS AGREED FINAL ORDER SHALL BE EFFECTIVE FOR THE FULL TERM COMMENCING ON THE EFFECTIVE DATE OF THE REVOCATION OF PROBATION. IN ADDITION, THE FULL ADMINISTRATIVE PENALTY SHALL BE DUE WITHIN 10 DAYS OF THE EFFECTIVE DATE OF THE REVOCATION OF PROBATION.

ANY SUCH SUSPENSION AND ADMINISTRATIVE PENALTY SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT OR THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS.

RESPONDENT, BY SIGNING THIS AGREED FINAL ORDER, WAIVES THE RESPONDENT'S RIGHT TO A FORMAL HEARING, ANY MOTION FOR REHEARING, AND ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's web site.

RESPONDENT IS SOLELY RESPONSIBLE FOR TIMELY DELIVERY TO THE BOARD OF ALL DOCUMENTS AND PAYMENTS NECESSARY FOR COMPLIANCE OF THIS AGREED FINAL ORDER. PAYMENT OF ANY ADMINISTRATIVE PENALTY DUE MUST BE IN THE FORM OF A CASHIER'S CHECK OR MONEY ORDER MADE PAYABLE TO THE TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD. RESPONDENT SHALL RETAIN DOCUMENTATION (REPLY EMAIL, FAX CONFIRMATION, RETURN RECEIPT, ETC.) CONFIRMING RECEIPT BY THE BOARD OF ALL THE NECESSARY DOCUMENTS.

RESPONDENT SHALL SEND ALL DOCUMENTS AND PAYMENTS NECESSARY FOR COMPLIANCE BY: (1) EMAIL TO COMPLIANCE.TALCB@TALCB.TEXAS.GOV, (2) FAX TO (512) 936-3966, ATTN: COMPLIANCE, OR (3) CERTIFIED MAIL RETURN RECEIPT REQUESTED TO STANDARDS & ENFORCEMENT SERVICES, TEXAS APPRAISER LICENSING & CERTIFICATION BOARD, STEPHEN F. AUSTIN BUILDING, 1700 N. CONGRESS AVE., SUITE 400, AUSTIN, TX 78701.

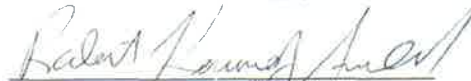
I HAVE READ AND REVIEWED THIS ENTIRE AGREED FINAL ORDER FULLY AND AM ENTERING INTO IT OF MY OWN FREE WILL TO AVOID THE EXPENSE OF LITIGATION AND TO REACH AN EXPEDITIOUS RESOLUTION OF THE MATTER. I NEITHER ADMIT NOR DENY THAT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW CONTAINED HEREIN ARE CORRECT. I UNDERSTAND ALL OF MY COMPLIANCE OBLIGATIONS UNDER THIS AGREED FINAL ORDER AND THE CONSEQUENCES FOR FAILING TO COMPLY WITH THOSE OBLIGATIONS.

I UNDERSTAND THAT THE BOARD AND ITS STAFF CANNOT PROVIDE ME WITH LEGAL ADVICE. I AM AWARE OF MY RIGHT TO A HEARING, AND HEREBY WAIVE A HEARING AND ALSO WAIVE ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER, INCLUDING FOR ANY SUBSEQUENT ACTION RESULTING FROM MY FAILURE TO TIMELY COMPLY WITH AN ADMINISTRATIVE REQUIREMENT OF THIS AGREED FINAL ORDER, SUCH AS PAYMENT OF A FEE, COMPLETION OF COURSEWORK OR FAILURE TO PROVIDE LOGS.

This agreement may be executed in one or more counterparts, in form of electronic mail, facsimile, or other written expression of agreement, each of which shall be deemed an original and together shall comprise evidence of full execution of the agreement.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 28 day of March, 2013.



ROBERT KENNEDY ARNOLD



TED WHITMER, ATTORNEY FOR
ROBERT KENNEDY ARNOLD

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 28 day of March, 2013, by ROBERT KENNEDY ARNOLD, to certify which, witness my hand and official seal.



Notary Public Signature

SHIRLEY M. JAMESON

Notary Public's Printed Name



Signed by the Standards and Enforcement Services Division this 16th day of May, 2013.



Troy Beaulieu, TALCB Staff Attorney

Signed by the Commissioner this 17 day of May, 2013.



Douglas Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 17 day of May, 2013.



Walker Beard, Chairperson
Texas Appraiser Licensing and Certification Board